UNITED
NATIONS

AT

Administrative Tribunal

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ORIGINAL: ENGLISH

ADMINISTRATIVE TRIBUNAL

Judgement No. 602

Case No. 607: CALDER

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Jerome Ackerman, President; Mr. Luis de Posadas Montero, Vice-President; Mr. Hubert Thierry;

Whereas at the request of Girvan Lloyd Calder, a staff member of the United Nations, the President of the Tribunal, with the agreement of the Respondent, successively extended to 31 March and 30 June 1991, the time-limit for the filing of an application to the Tribunal;

Whereas, on 24 June 1991, the Applicant filed an application requesting the Tribunal:

"...

(3) To declare that the Applicant was deprived of due process in that:

(a) the standards and procedures should remain consistent, ..., from the beginning of the classification exercise until its conclusion, even though the initial process as well as subsequent appeal and review activities lasted several years;

(b) all promises and guarantees relevant to the classification of the functions of a post under review, ..., must be respected before any final decision can be reached regarding such a case;

(4) To declare that the Applicant was deprived of fair consideration in that:

...

(b) ... the neglect ... to conduct necessary audits and interviews in light of the repeated claims by the Applicant that his duties ... are professional in nature is in violation of staff regulation 2.1;

...

(d) it is fair to conclude that a staff member is recognized as performing at the Professional level if the following conditions coexist:

1. ..., he assumes all the functions of a Professional post vacated by his previous Supervisor;

2. he is twice granted a Special Post Allowance (SPA) to P-2 against that post for a total of thirty months;

3. during which periods no one is assigned to perform the functions he is assumed to have vacated (at the GS-5 and GS-7 levels);

4. and that on both occasions when the posts were eventually filled by reassigned candidates (Programmer Analysts), they were never assigned to the Unit which the Applicant continues to supervise, clearly indicating the recognized independence of the two functions: Supervisor of the Personnel Data Unit and Programmer Analyst for the Planning and Information Section, as established by the job description (...) of the Programmer Analyst, which does not include supervisory or administrative functions.

...

(5) To rescind the decision by NYGSCARC, dated 4 June 1990;

(6) To direct the CCS [Compensation and Classification Service] and NYGSCARC [New York General Service Classification Appeals and Review Committee] to receive all additional relevant material the Applicant wishes to submit, as promised in the letter dated 12 August 1987, from the Chief of the Administrative Review Unit (...).

(7) To direct the CCS and NYGSCARC to reconsider the merits of the case and conduct the necessary audits and interviews with a view to properly classifying the post at the appropriate level in the Professional category as part of the overall classification process."

Whereas the Respondent filed his answer on 14 February 1992;

Whereas the Applicant filed written observations on 15 September 1992;

Whereas, on 19 October 1992, the Applicant submitted an additional statement;

Whereas, on 29 October 1992, the Tribunal requested the Respondent to provide the Applicant "with the analysis by the Compensation and Classification Service referred to in each case as one of the elements considered by New York General Service Classification Appeals and Review Committee (NYGSCARC) in making its recommendations on the level of the posts" and put a further question to the Respondent.

Whereas, on the same date, the Tribunal put further questions to the Applicant and also asked him "to advise the Tribunal whether there is any further information that ... she wishes to be considered, which deals exclusively with the above analysis and the nature of the duties and responsibilities of the post, as set forth in the job descriptions to which that analysis was directed".

Whereas, on 3 November 1992, the Respondent submitted to the Tribunal the documentation requested and on 9 November 1992, the Applicant provided his comments thereon, together with replies to the questions put by the Tribunal.

Whereas, on 20 November 1992, the Executive Secretary of the Tribunal informed the parties that the Tribunal had decided to adjourn consideration of the case until its 1993 Spring session;

Whereas the facts in the case are as follows:

Girvan Lloyd Calder entered the service of the United Nations on 8 September 1970, on a short-term appointment for the duration of the General Assembly, at the G-1 level, as a Messenger in the Office of General Services. He served thereafter on a series of short-term appointments until 27 February 1971, when he was given a three month fixed-term appointment, at the GS-2 level, as an English Clerk. On 27 May 1971, he was granted a probationary appointment. On 1 January 1973, he received a permanent appointment and was promoted to the GS-3, step II level, as a Coding Clerk at the Computer Liaison Office, Personnel Data Unit, Policy Coordination of the Office of Personnel Services (OPS). On 1 April 1975, the Applicant was promoted to the GS-4 level, as a Senior Clerk. On 1 April 1978, he was promoted to the GS-5 level, as Administrative Assistant, in the same Department. From 1 October 1981 until 2 August 1982, the Applicant was granted a Special Post Allowance (SPA) at the P-2 level and his functional title was changed to Acting Programme Analyst. The Applicant was promoted to the GS-7 level, pursuant to the reclassification of his post, with effect from 1 January 1985. The Applicant received an SPA at the P-2 level, from 1 August 1987 through 1 April 1989.

In July 1982, the International Civil Service Commission (ICSC) had approved the establishment of a seven-level grading structure (to replace the old five-level structure) for the General Service category in New York and promulgated job classification standards for the seven levels. As a result, all General Service posts in New York were classified under procedures set out in administrative instruction ST/AI/301 of 10 March 1983.

In accordance with the administrative instruction, a description of the post encumbered by the Applicant was prepared

for initial classification and submitted to the Classification Service on 8 November 1983.

On 13 June 1984, the Assistant Secretary-General, OPS, announced to the staff, in information circular ST/IC/84/45, the establishment of the Classification Review Group "to review the overall results of the classification exercise currently being undertaken in respect of posts in the General Service and related categories in New York". The Applicant's post was classified at the GS-7 level.

On 28 April 1986, the Assistant Secretary-General, OPS, informed the staff, in information circular ST/IC/86/27, "of the action taken with respect to the classification exercise for posts in the General Service ... categories at United Nations Headquarters and to outline future action, in particular with respect to the implementation of the results of the exercise and the related appeals procedure." NYGSCARC was established with effect from 16 May 1986, to hear appeals against the results of the classification exercise.

In a memorandum dated 12 June 1986, the Applicant appealed the initial classification of his post, stating: "I believe that the Job Description originally submitted for the classification review exercise did not fully describe the duties of my post. Furthermore, I strongly believe that the duties I perform are in the Professional category. A revised job description is attached for a new classification review ..."

The Assistant Secretary-General, Office of Human Resources Management (OHRM[1]), submitted the Applicant's case to NYGSCARC for advice on the basis of information circular ST/IC/86/27 Annex II, subparagraph 10(c). However, the procedure contained in subparagraph 10(b) of the information circular, requiring review by the Classification Service, was not followed.

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[1] Successor of OPS.

NYGSCARC reviewed the case and confirmed classification of the post at the GS-7 level. The Assistant Secretary-General, OHRM, approved this recommendation on 30 January 1987.

In a letter dated 10 June 1987, to the Assistant Secretary-General, OHRM, the Applicant requested review of the classification decision, on the grounds that the post had not been reviewed by the Classification Service, in accordance with the provisions of administrative instruction ST/AI/301.

The case was resubmitted to NYGSCARC after the procedure had been corrected. NYGSCARC reviewed the appeal at its fourth meeting on 1 March 1990 and, on 18 May 1990, recommended as follows: "Based upon its review of the revised job description submitted as part of the initial appeal, the information provided by the appellant in his memoranda of appeal, the analysis provided by the Compensation and Classification Service which confirmed the initial classification decision, the Committee concluded that the functions of the post corresponded to the GS-7 level depicted in the General Service Classification Standards. Accordingly, the Committee recommends that the post be maintained at the GS-7 level in the Computer Programming Related occupation".

In a memorandum dated 4 June 1990, the Assistant Secretary-General, OHRM, informed the Applicant that he had approved the recommendation by NYGSCARC.

In a letter dated 17 August 1990, the Applicant requested the Secretary-General, pursuant to staff rule 111.2, to review that administrative decision. In a reply dated 27 September 1990, the Director, Staff Administration and Training Division, OHRM,stated:

> "The Secretary-General considers that the prior submission of the matter to the New York General Service Classification and Review Committee satisfies the requirement set out in article 7 of the Statute of the Administrative Tribunal that a dispute be

submitted to a joint appeals body. The proper forum for any further appeal is therefore the Administrative Tribunal, not the Joint Appeals Board. ..."

On 24 June 1991, the Applicant filed with the Tribunal the application referred to earlier.

Whereas the Applicant's principal contentions are:

1. The classification procedures established by the Respondent violated the right of staff to proper classification of their posts in accordance with staff regulation 2.1.

2. The Respondent improperly classified the Applicant's post at the GS-7 level, rather than in the Professional category.

3. The Respondent failed to perform a classification audit of the Applicant's post, as required by paragraph 13 of administrative instruction ST/AI/301.

4. The Respondent violated the Applicant's rights to due process because of changes made in procedures to deal with General Service classification appeals during the introduction of the new General Service classification structure and because guarantees given to the Applicant were not respected.

Whereas the Respondent's principal contention is:

The Respondent's discretionary decision on the classification of the Applicant's post was properly taken following an independent review by a specialized appeals body.

The Tribunal, having deliberated from 7 June to 29 June 1993, now pronounces the following judgement:

I. The Applicant challenges the decision, by the Respondent, dated 4 June 1990, adopting a recommendation dated 18 May 1990, by the New York General Service Classification Appeals and Review Committee (NYGSCARC), rejecting the Applicant's classification appeal, finding that his post was properly classified at the GS-7 level. The Applicant claims that his post should be classified at

at the P-2 level. In support of his application, the Applicant contends that he was deprived of due process and fair consideration in various respects. He asks that the Respondent's decision be rescinded and that NYGSCARC receive all additional relevant material the Applicant wishes to submit and properly reconsider the merits of the case.

II. The issues in this case are similar to those presented to the Tribunal in Judgement No. 541, Ibarria (1991). In Ibarria, the Tribunal recalled its jurisprudence in Judgement No. 396, Waldegrave (1987), in paragraph XV of which the Tribunal stated:

> "It is not the function of the Tribunal to substitute its judgement for that of the Secretary-General in job classification matters. This would be so even if the Tribunal had the required expertise in this area - which it does not. For the most part, the arguments advanced on behalf of the Applicant seek to have the Tribunal determine independently how it would classify the post in question, but this is not the role of the Tribunal. It is instead the function of the Tribunal to determine whether, under all the circumstances, the Respondent has acted within his reasonable discretion..."

The same principles govern this case. The Applicant's contentions are aimed largely at persuading the Tribunal that the content of the Applicant's post is such that it should be classified at a Professional level. As indicated above, however, the Tribunal will not enter into an evaluation of the elements of the Applicant's job description.

III. For the reasons set forth in paragraph II above, the Tribunal makes no determination as to whether the Applicant's substantive contention that the proper classification of his post should be at the Professional level, is meritorious. That is for the Respondent to determine, in the exercise of his reasonable discretion, based upon such appropriate analysis and advice from NYGSCARC as he may wish to rely upon. In rendering such advice,

NYGSCARC must, of course, assure that it has taken into account and considered fairly the views of the staff member and knowledgeable officials in his Department, though NYGSCARC is not bound by those views. Proper classification of a post should be in accordance with applicable International Civil Service Commission standards and should be based on a reasonable evaluation of the factual content of a post as set forth in its description.

IV. As in Ibarria, the Tribunal's concern is with matters such as a denial of due process, if the staff member neither sees nor has an opportunity to comment on documentation sent by the Service in charge of classification to NYGSCARC. In this case, that concern is brought into even sharper focus by a letter dated 12 August 1987, from the Chief of the Administrative Review Unit, assuring the Applicant that when his case was submitted to NYGSCARC, he would be "given the opportunity to present any material that may be relevant." This assurance does not appear to have been fully honoured.

V. It does not appear that a significant memorandum dated 8 September 1989, submitted by the Deputy Chief, Compensation and Classification Service to NYGSCARC, on which NYGSCARC relied in its recommendation to the Respondent, was made available to the Applicant. He, therefore, had no opportunity to submit material he deemed relevant with regard to that memorandum. The Tribunal directed that the memorandum be made available to the Applicant and he has submitted a memorandum dated 9 November 1992, with respect to it.

VI. It appears that some possibly material information which was not previously presented is contained in the Applicant's 9 November 1992 memorandum. Accordingly, the Tribunal finds that this case should be remanded to the Respondent. He should arrange for consideration by NYGSCARC of relevant materials

1992. In addition, NYGSCARC may also take into account, to the extent relevant, information submitted to the Tribunal by the Applicant in his application dated 24 June 1991 and in his written observations.

VII. NYGSCARC is, of course, free to seek such further relevant analysis, information and advice as it wishes from the Compensation and Classification Service or the Administration. The Administration is certainly entitled to submit its views. The Applicant should, of course, be given the opportunity to comment on those views. The Tribunal reiterates that NYGSCARC is not required by the Tribunal's Judgement to accept or reject any or all of the Applicant's substantive contentions. The reasons for NYGSCARC's conclusions and recommendations should be explained clearly.

VIII. The Applicant asserts that a Special Post Allowance (SPA) received by him at the Professional level, on more than one occasion, confirms his contention that his post is at the Professional level and should be so classified. The Respondent, in this regard, has submitted to the Tribunal a memorandum dated 1 November 1992, from the Chief, Staff Administration and Monitoring Service, claiming that the Applicant's post was not the post for which SPA's were granted. It further claims that the Applicant agreed that, before he could become eligible for promotion to the Professional category, it would be necessary for him to pass a competitive examination. In any event, a factual issue is raised by the Applicant's contention with regard to the SPAs - namely, whether the description of his GS-7 post and the work he was doing pursuant to that description, was identical to the Professional level posts for which he received the SPAs. That is a matter to be inquired into and addressed by NYGSCARC,

on the basis of such information as it may wish to receive from the Administration and such comments thereon as the Applicant may wish to submit.

IX. The Tribunal notes that one of the Applicant's contentions relates to a job classification audit. As the Tribunal found in Ibarria, the Classification Service has discretion as to whether to conduct an audit in any particular case. If it wishes to do, it may. But, if it decides against conducting an audit because it does not deem one necessary for its analysis and advice, that will provide no basis for a claim by the Applicant.

X. The Tribunal notes that this appeal is before it on the basis of a letter dated 27 September 1990, to the Applicant from the Director, Staff Administration and Training Division. The letter states the Respondent's belief that NYGSCARC stands in the same position as a joint appeals board, insofar as the jurisdiction of the Tribunal is concerned. That precise question has not previously been decided, and need not be decided in this case, in view of the Respondent's directive to the Applicant that: "... the proper forum for any further appeal is therefore the Administrative Tribunal not the Joint Appeals Board...".

The Tribunal recognizes that there are meaningful differences between NYGSCARC and a joint appeals board. In Ibarria, the Tribunal expressed concern at NYGSCARC's procedure, but found that with the modifications discussed in paragraph VIII of that judgement, it met minimal due process requirements. The Tribunal believes that, if the Respondent wishes to retain a specialized body such as NYGSCARC, which, in advising the Respondent, appears to rely heavily on the advice of the Compensation and Classification Service, it would be appropriate for that body to approximate more closely - in what is essentially an adversarial proceeding - the procedures of the Joint Appeals Board. This would ensure a comparable level of transparency and observance of due process. In the Tribunal's

opinion, this ought to lead not only to better informed decisions but would avoid or lessen the delays and need for remand arising from procedural problems.

XI. With the exception of delay resulting from the need for a remand, the Tribunal, at this stage, does not consider that there is any basis for an award of compensation, as claimed by the Applicant in her pleas.

XII. In view of the foregoing, the Tribunal orders that:

(a) The case be remanded as set forth above.

(b) The Applicant be paid three months' of his current net base salary compensation for delay resulting from the need for a remand.

(c) All other pleas are rejected.

(Signatures)

Jerome ACKERMAN
President

Luis de POSADAS MONTERO
Vice-President

Hubert THIERRY
Member

Geneva, 29 June1993

R. Maria VICIEN-MILBURN
Executive Secretary